IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.628/2002
Reserved on.25.5.2007
Decided on.14.6.2007

Kiran Agarwal **…Petitioner.**

Versus

High Court of H.P. **…Respondent**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. Yes.*

For the petitioner : **In person**

For the respondent No.1 **Mr. Bipin Chand Negi, Advocate.**

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that a memorandum was issued to the petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on 4th November, 1996. She was put under suspension on 4.4.1997. The Inquiry Officer had come to the conclusion in his report dated March 27, 1997 that all the three charges (articles) stand conclusively proved against the petitioner. In sequel to the inquiry report dated 27th March, 1997 vide notification dated 29th April, 1997, she was dismissed from the H.P. Higher Judicial Service with immediate effect. She had filed CWP No. 527/1997 in this Court. The CWP No. 527 of 1997 was partly allowed by this Court on July, 2001 and the operative portion of the judgment is reproduced as under:

> **"For the reasons aforesaid, the petition deserves to be partly allowed. The enquiry initiated against the petitioner is held to**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? Yes.

be legal, valid and in accordance with law, so also the findings arrived at by the Inquiry Authority do not call for any interference and the charges levelled against the petitioner are held proved but an order of penalty of dismissal passed against the petitioner is disproportionate, excessively high and unreasonable. The order of penalty is, therefore, set aside and the matter is sent back to the Disciplinary Authority for reconsideration and to take appropriate decision in accordance with law. In the light of the decisions of the Hon'ble Supreme Court, as also the observations made in the earlier part of the judgment. The petition is accordingly partly allowed. In the facts and circumstances of the case, there shall be no order as to costs."

In sequel to the judgment, order was issued on 9th August, 2001 and the relevant portion of the same is reproduced as under:

"Now, therefore, in view of the provisions of Rule 10 (4) of the CCS (CCA) Rules, 1965, it is hereby notified that the order of suspension of the said Smt. Kiran Agarwal as notified vide order No.HHC/GAZ/14-30/74-II-5530-5537, dated 4.4.1997, shall be deemed to have continued in force on and from the date of the aforesaid order of dismissal, i.e. 29.7.1997, and shall remain in force until further orders.

The Headquarters of the said Smt. Kiran Agarwal during the deemed suspension shall remain the same as fixed, vide initial order of suspension dated 4.4.1997."

Thereafter vide notification dated 27th September, 2001; the penalty of dismissal was substituted by the penalty of compulsory retirement from the H.P. Higher Judicial Service (Annexure P-15). Respondent had issued office order dated February 8, 2002 and the operative portion of the same is reproduced below:

"The subsistence allowance as fixed above shall be paid to Smt. Kiran Agarwal for the period from 5.4.1997 to 9.8.2001 by the office of the District and Sessions judge, Hamirpur. Thereafter, the subsistence allowance as referred to above for the period from 10.8.2001 to 27.9.2001 along with capital allowance and House Rent allowance as admissible under the rules shall be paid to Smt. Kiran Agarwal, by the High Court of H.P. as her headquarter was fixed at Shimla in place of Hamirpur, vide this Registry order No.HHC/GAZ/14-30/74-II-2160 dated 10/13.8.2001."

She was also called upon by the respondent to send the requisite forms for processing the pension case.

The respondent had filed reply to the writ petition and the petitioner had also filed rejoinder to the same.

The petitioner had appeared in person. She had submitted that after the order of dismissal was set aside by this Court on 30th September, 2001 in CWP No. 527/1997, she could not be put under suspension with effect from 4.4.1997 as per Annexure P-3 dated August 9, 2007. She had also contended that the Annexures P-1 and P-2 were not in accordance with law.

Mr. Bipin Chand Negi, Advocate appearing on behalf of the respondent had supported the orders impugned in the writ petition.

I have heard the parties and perused the record.

For better appreciation of the rival submissions of the parties it will be pertinent to reproduce sub rule 4 of Rule 10 of the CCS (CCS) Rules, 1965 as under:

"Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the Disciplinary Authority,

on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case."

The contention of the petitioner on the basis of sub Rule 4 of Rule 10 of the CCS (CCA) Rules, 1972 is that the same could not have been invoked by the respondent since the conditions stipulated therein were not applicable to her more particularly when no further inquiry was to be held against her.

Mr. Bipin Chand Negi, Advocate had contended that since the Division Bench of this Court had only held the penalty imposed upon the petitioner disproportionate and had directed to re-consider the same, sub Rule (4) of Rule 10 of the CCS (CCA) Rules, 1965 was applicable and the decision to put her under suspension with effect from 4.4.1997 was valid.

The employer must always be guided by the principles laid down in Chapter 3 – General Instructions of Swamy's Compilation of CCS (CCA) Rules which are reproduced as under:

"(1) Guiding Principles for placing a Government servant under suspension. – It has been decided that public interest should be the guiding factor in deciding to place a Government servant under suspension, and the Disciplinary Authority should have the discretion to decide this taking all facts into account. However,

the following circumstances are indicated in which a Disciplinary Authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory:-

(i) Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (e.g., apprehended tampering with witnesses or documents);

(ii) Where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working;

(iii) Where the continuance in office of the Government servant will be against the wider public interest other than those covered by (i) and (ii) such as there is a public scandal; and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) Where allegations have been made against the Government servant and the preliminary inquiry has revealed that a prima facie case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

NOTE(a).- In the first three circumstances, the disciplinary authority may exercise his discretion to place a Government

servant under suspension even when the case is under investigation and before a prima facie case is made out.

NOTE (b).- Certain types of misdemeanour where suspension may be desirable in the four circumstances mentioned, are indicated below-

(i) any offence or conduct involving moral turpitude;

(ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official power for personal gain.

(iii) Serious negligence and dereliction of duty resulting in considerable loss to Government;

(iv) Desertion of duty;

(v) Refusal or deliberate failure to carry out written orders of superior officers.

In respect of the type of misdemeanour specified in sub-clauses (iii), (iv) and (v), discretion has to be exercised with care.

[G.I.'M.H.A.' Letter No. 43/56/64-AVD, dated the 22nd October, 1964.]

The circumstances in which an employee will be deemed to be under suspension along with procedure have been laid down in Chapter-2 (Deemed suspension) of Swamy's Compliation of CCS (CCA) Rules as under:

"7. Deemed suspension

(a) While in service.-

1. Under Rule 10 (2) CCS (CCA) Rules, 1965, a Government servant shall be deemed to have been placed under suspension by an order of appointing authority in the following circumstances:-

(a) If he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty eight hours.

Cases of detention in custody under any law providing for preventive detention or as a result of proceedings for arrest for debt will also fall in this category.

(b) If in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours.

2. If a Government servant who has been detailed for a period exceeding forty eight hours is later on released on bail, such release will not affect the deemed suspension which will continue to be in force until revoked by the competent authority.

3. The period of forty-eight hours referred to in Para 1 category (b) above will be computed from the commencement of imprisonment after the conviction and intermittent periods of imprisonment, if any, will be taken into account as provided in Explanation under Rule 10 (2).

4. A duty has been cast on the Government servant who is arrested for any reason to intimate promptly the fact of his arrest and the circumstances connected therewith to his official superior even though he might have been released on bail subsequently. Failure to do so will be regarded as suppression of material information rendering him liable to disciplinary action on this ground alone, apart from the action that may be called for on the outcome of the Police case against him.

5. Cases of suspension during pendency of criminal proceedings or proceeding for arrest for debt or during detention under a law providing for preventive detention will be dealt with in the following manner:-

(a) A Government servant who is To be deemed to be

	detained in custody under any law providing for preventive detention or as a result of a proceeding either on criminal charge or for his arrest for debt-if the period of detention exceeds forty eight hours.	**under suspension under Rule 10 (2).**
(b)	**A Government servant who is undergoing a sentence of imprisonment-pending decision on the disciplinary action to be taken against him.**	**To be deemed to be under suspension under Rule 10 (2).**
(c)	**A Government servant against whom a proceeding has been taken on a criminal charge but who is not actually detained in custody (e.g. a person released on bail) – if the charge is connected with the official position of the Government servant or involved moral turpitude on his part.**	**To be placed under suspension under Clause (b) of Rule 10 (1), unless there are exceptional reasons for not adopting this course.**
(d)	**A Government servant against whom a proceeding has been taken for arrest for debt but who is not actually detained in custody.**	**To be placed under suspension under Clause (a) of Rule 10 (1), only if a disciplinary proceeding against him is contemplated.**

(b) While not in service.-

6. Under Rule 10 (3) where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on revision and the case is remitted by the appellate or revising authority for further enquiry or action or with any other direction, the order of suspension will be deemed to

have been continued in force on and from the date of original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

7. Similarly, where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law, recourse can be had to Rule 10 (4). It has been clarified that the further enquiry contemplated in this rule should not be ordered except in a case where the penalty of dismissal, removal or compulsory retirement has been set aside by a Court of Law on technical grounds without going into the merits of the case or when fresh material has come to light which was not before the Court. A further enquiry into the charges which have not been examined by the Court can, however, be ordered by the departmental authorities under this rule, depending on the facts and circumstances of each case.

8. It may be noted that according to the wording of sub-rules (3) and (4) of Rule 10, while in the case failing under the earlier sub-rule, the Government servant should have been under suspension before dismissal, etc; no such condition has been prescribed for a case falling under the latter sub-rule.

9. Under the said rule, in such a case the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and continue to remain under suspension until further orders.

10. *Though in all the above type of cases suspension is deemed to have continued automatically, issue of formal order of suspension is necessary, indicating the specific rule under*

which the order is issued, after satisfying that the conditions stipulated therein are fulfilled.

11. The Supreme Court has held that the order in terms of Rule 10 (2) is not restricted in its point of duration or efficacy to the actual period of detention only. It continues to be operative unless modified or revoked under sub-rule (5) (C) as provided in sub-rule 5 (a).”

It is evident from the instructions quoted above that the employee should be put under suspension if the conditions contained therein are fulfilled. Sub –para 10 of para 7 provides that the issue of formal order of suspension is necessary indicating the specific rule under which the order is issued, after satisfying that the conditions stipulated therein are fulfilled. The close scrutiny of Annexure P-3 does not disclose due application of mind before its issuance though the relevant provisions of sub rule (4) of Rule 10 of the CCS (CCA) Rules, 1965 has been quoted. The Annexure P-3 should have been a speaking order reflecting due application of mind more particularly when the order of dismissal has been set aside by this Court.

The question whether the employee after setting aside the penalty imposed upon him will be deemed to be under suspension or not has been considered by the Supreme Court in ***H.L. Mehra V. Union of India and others,*** AIR 1974 SC 1281 as under:

“The suspension of the appellant was originally made under an order dated 11th April, 1963 in exercise of the power conferred under sub rule (1) of Rule 12 of the CCS (CCA) Rules, 1957 and it was this suspension which was purported to be continued by the impugned order under sub-rule (5) (b) of Rule 10 of the CCS (CCA) Rules, 1965. There was some controversy before the Delhi High Court as to which set of Rules would be applicable for continuing the suspension of

the appellant at the date when the impugned order was passed. The appellant contended that the Rules applicable would be the CCS (CCA) Rules 1957 and the impugned order made under the CCS (CCA) Rules, 1965 was, therefore, bad. But this contention was rejected by the Delhi High Court and rightly because R. 34 of the CCS (CCA) Rules, 1965, which repeals the CCS (CCA) Rules, 1957 provides in Proviso (b) for the application of the CCS (CCA) Rules, 1965 to pending proceedings. This being the clear position, the learned counsel for the appellant conceded that the validity of the impugned order continuing the suspension of the appellant would have to be judged by reference to the CCS (CCA) Rules, 1965.

Now the only provision in the CCS (CCA) Rules, 1965 which deals with suspension is Rule 10. It would be convenient at this stage to refer to the relevant provisions of that rule:

"10. (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the president by general or special order, may place a Government servant under suspension –

(a) where a disciplinary proceeding against him is contemplated or is pending, or….

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case e is remitted for further inquiry or action or with any other directions, the order of the suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or

compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Government servant is suspended or it deemed to have been suspended, (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings."

Since the impugned order continuing the suspension of the appellant is purported to be made under sub-rule (5) (b) of Rule 10, we may first examine whether it is justified on the

terms of that sub-rule. Sub-rule (5) (b) postulates that a Government servant is suspended or deemed to have been suspended – this latter contingency would arise where a case falls within sub rule (2) – and during the continuance of his suspension "any other disciplinary proceedings" is commenced against him and provides that in such a case, a direction may be given that he shall continue under suspension until the termination of such disciplinary proceeding. The words "Government servant shall continue to be under suspension" in the juxtaposition of the opening clause clearly suggest that the basic condition for the applicability of sub-rule (5) (b) is that the Government servant should be under co0ntinuing suspension at the date when "any other disciplinary proceeding" is commenced against him and direction is given for continuance of the suspension. It is indeed difficult to see how a Government servant can be directed to continue to be under suspension unless he is under suspension at the time when such direction is given. There can be fresh suspension of a Government servant but we fail to see how there can be continuance of a suspension which does not exist. Two conditions must, therefore, co-exist before action can be taken under sub rule (5) (b): one is that the Government servant must be under continuing suspension and the other is that during the continuance of such suspension "any other disciplinary proceeding" should be commenced against him.

Now in the present case, we will assume with the respondents that under the second part of the impugned order, a disciplinary proceeding was commenced against the appellant, though it was really a revival of the old inquiry

instituted under the Memorandum dated 8th March, 1965 and not the commencement of a new disciplinary proceeding. But even so, the question would still remain whether the appellant was under suspension at the date when the impugned order was made. It is only, if he was, that he could be continued under suspension under sub-rule (5) (b) of R. 10. The appellant was originally suspended under the order dated 11th April, 1963 because a case against him in respect of a criminal offence was under investigation. This was followed by the institution of a criminal case against him and in this criminal case he was convicted by the Special Judge and his conviction was confirmed by the Bombay High Court. On the basis of the judgment of the Bombay High Court confirming his conviction, he was dismissed by the President by an order dated 26th October, 1967. The argument of the appellant was that on the passing of the order of dismissal his suspension came to an end and even though the order of dismissal was subsequently set aside by the President by the first part of the impugned order, that did not have the effect of reviving the suspension and the appellant was accordingly not under suspension at the date when the impugned order was made. The respondents, on the other hand, contended that by reason of sub-rule (5) (b) of Rule 10 the order of suspension passed on 11th April, 1963 continued to remain in force despite the making of the order of dismissal and in any event, even if the suspension came to an end as a result of the passing of the order of dismissal, it was revived with retrospective effect when the order of dismissal was set aside by the President by the first part of the impugned order and, therefore, at the instant of time when the third part of the impugned order was

made under sub rule (5) (b) of Rule 10, the appellant was under suspension. We find there is great force in the argument of the appellant and the contention of the respondents to the contrary must be rejected. Both principle as well as precedent compel us to this conclusion.

Let us first examine the question on principle. When an order of suspension is made against a Government servant pending an enquiry into his conduct, the relationship of master and servant does not come to an end. What the Government, as master, does in such a case is merely to suspend the Government servant from performing the duties of his office. The Government issues a direction forbidding the Government servant from doing the work which he was required to do under the terms of the contract of service or the statute or rules governing his conditions of service, at the same time keeping in force the relationship of master and servant. In other words, to quote Hegde, J.' from V.P. Gindroniya v. State of Madhya Pradesh, (1970) 3 SCR 448 = (AIR 1970 SC 1494) = 1970 Lab IC 1332) "the employer is regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey". This being the true nature of an order of suspension, it follows that the Government servant would be entitled to his remuneration for the period of suspension unless there is some provision in the statute or rules governing his conditions of service which provides for withholding of such remuneration. Now, when an order of dismissal is passed, the vinculum juris between the Government and the servant is dissolved: the relationship of master and servant between them is extinguished. Then the order of suspension must a fortiori come to an end. But what

happens when the order of dismissal is subsequently set aside? Does that revive the order of suspension? We do not think so. Once the suspension has come to an end by an order of dismissal, which was effective when made, it cannot be revived by mere subsequent setting aside of the order of dismissal in the absence of a statutory provision or rule to that effect. That is precisely the reason why sub rules (3) and (4) had to be introduced in Rule 10 providing for retrospective revival and continuance of the suspension in cases falling within those sub rules. This position which emerges clearly on principle is supported also by authority. There is a decision of a Bench of six judges of this Court which endorses the same view. That is the decision in Om Prakash Gupta v. State of Uttar Pradesh, (1955) 2 SCR 391 = (AIR 1955 SC 600). The appellant in that case was suspended from service with effect from 24th August, 1944 pending an enquiry into his conduct. The Commissioner completed the enquiry and made a report to the Government and on the basis of the report the Government passed an order dated 25th November, 1944 dismissing the appellant from service. The appellant claimed that the order of dismissal passed against him was illegal and void and he continued to be in service and was entitled to recover arrears of salary. The claim that the order of dismissal was illegal and void and the appellant continued to be in service was upheld by the high Court but relief by way of recovery of arrears of salary was refused and the appellant, therefore, preferred an appeal to this Court. The claim of the appellant for arrears of salary which was debated before this Court related to two distinct period: one from the date of the order of suspension up to the date of the order of dismissal,

and the other from the date of the order of dismissal up to the date when the order of dismissal was set aside by the Court. So far as the claim for the first period was concerned, the appellant gave it up before this Court, as it would have necessitated a remand which would have involved the appellant in heavy expenditure and harassment. The claim for the second period was, however, seriously pressed on behalf of the appellant and this Court decreed it for reasons which may best be stated in the words of Imam, J.' speaking on behalf of the Court.

"He", i.e. the appellant, "however, contended that the order of suspension continued to be in force only until the 25th November, 1944, the date of the order of dismissal. On that date the order of suspension ceased to exist and the appellant was entitled to recover arrears of salary from the 25th November, 1944, to the 31st December, 1947, inclusive. The Attorney General strongly contended that it continued to be in force and that it was not at all affected by the declaration of the civil Judge that the order of dismissal was illegal. In view of that decision the order of dismissal must be regarded as a nullity and non-existent in the eye of law. The inquiry, the outcome of which was the order of dismissal, had not therefore ended. It could only end with a valid order which would replace the order of suspension. Until that happened the accusation against the appellant remained and the inquiry had not ended. He referred to the case of Gopal Krishna Naidu v. State of Madhya Pradesh, AIR 1952 Nag 170. On behalf of the appellant reliance was placed on the case of Provincial Government, Central Provinces and Berar v. Shamshul Hussain, ILR (1948) Nag. 576 = AIR 1949 Nag 118. The order of

suspension made against the appellant was clearly one made pending an inquiry. It certainly was not a penalty imposed after an enquiry. As the result of the inquiry an order of dismissal by way of penalty had been passed against the appellant. With that order, the order of suspension lapsed. The order of dismissal replaced the order of suspension which then ceased to exist. That clearly was the position between the Government of the united Provinces and the appellant. The subsequent declaration by a Civil Court that the order of dismissal was illegal could not revive an order of suspension which did not exist. The case referred to by the Attorney-General is not directly in point and that decision does not conflict with the case relied upon by the appellant. The appellant is, therefore, entitled to recover arrears of salary from the 25th November, 1944 to 31st December, 1947."

This decision leaves no room for doubt as to the correct legal position and the conclusion must, therefore, inevitably follow that when the order of dismissal was passed on 26th October, 1967, the order of suspension dated 11th April, 1963 ceased to exist and it did not revive thereafter by the subsequent setting aside of the order of dismissal by the first part of the impugned order. The appellant was accordingly not under suspension at the point of time when the third part of the impugned order was made and in the circumstances, the third part of the impugned order could not be justified under sub-rule (5) of Rule 10.

We must at this stage refer to one other contention advanced on behalf of the respondents in support of the third part of the impugned order. That contention was based on sub-rule (5) (a) of Rule 10, which provides that an order of

suspension made or deemed to have been made under that rule shall continue to remain in force until it is modified or revoked by the authority competent to do so. The argument of the respondents was that the order of suspension dated 11th April, 1963, though made under sub-rule (1) of Rule 12 of the CCS (CCA) Rules, 1957, must by reason of proviso (b) to Rule 34, be deemed to have been made under sub-rule (1) of Rule 10 and consequently, it must, by virtue of sub-rule (5) (a) of rule 10 continue to remain in force until modified or revoked by a competent authority. It was said that the President, who is the competent authority for this purpose, had at no time revoked or modified this order of suspension and it, therefore, continued in force even after the making of the order of dismissal dated 26thOctober, 1967 and the third part of the impugned order did no more than merely recognize this position. This contention is wholly without force: it has merely to be stated in order to be rejected. We fail to see how an order of suspension can continue to be in force after the relationship of master and servant has come to an end by the making of an order of dismissal. How can a Government servant be forbidden from performing the duties of his office when his office is no more and he has no duties to perform because he is dismissed? The order of suspension postulates the continuance of the relationship of master and servant and this postulate is not destroyed by sub-rule (5) (a) of Rule 10. This sub-rule operates only within the framework of the relationship of master and servant. Once the relationship of master and servant is dissolved, the suspension necessarily comes to an end and sub-rule (5) (a) of Rule 10 cannot possibly be construed to have the effect of continuing the

suspension. The third part of the impugned order cannot, therefore, be sustained by reference to sub-rule (5) of Rule 10.

We must, therefore, inevitably reach the conclusion that the third part of the impugned order continuing the suspension of the appellant was outside the authority of the President. It could not be sustained under any of the three sub-rules of R. 10, namely, sub-rules (3), (5) (a) and (5) (b), on which reliance was placed on behalf of the respondents. Sub rule (i)of Rule 10 was rightly not invoked by the respondents because, in making the third part of the impugned order what the President did was merely to continue what he erroneously believed to be a subsisting suspension of the appellant until the termination of the enquiry and he did not claim or even profess to make afresh order of suspension. The third part of the impugned order continuing the suspension of the appellant could not, therefore, be justified under any sub-rule of Rule 10. It is unfortunate that though different sub-rules of Rule 10 have been enacted with great care and they are intended to be exhaustive so as to provide for all possible situations where it may be found necessary to revive and continue an order of suspension, a lacuna has remained and there is no provision made for a case such as the one we have before us. Perhaps a case of this kind would be rare and that is why the rule making authority has not thought about making any provision for it in Rule 10. But there can be no doubt that it is a lacuna and it must be remedied in order that there may be no break in the suspension of the Government servant when an order of dismissal is set aside or declared or rendered void in a situation of this kind. However as Rule 10 stands to-day, the third part of the impugned order continuing

the suspension of the appellant must be held to be void and inoperative. That means that the suspension of the appellant under the order dated 11th April, 1963 came to an end on 25th October, 1967 when the order of dismissal was passed against him and since then the appellant is no longer under suspension. The appellant must, therefore, be held to be entitled to salary from 25th October, 1967 and an order for payment of arrears of salary must be passed in his favour. This of course does not mean that the President cannot now, in exercise of the power under sub-rule (1) of Rule 10 pass a fresh order of suspension against the appellant pending the enquiry which ahs been revived and continued against him. It would always be open to the President to take appropriate action by way of suspension against the appellant under sub-rule (1) of Rule 10, if he so thinks fit. But until such action is taken, the appellant would be entitled to his salary under the conditions of service applicable to him. The claim of the appellant for the period between 11th April, 1963 and 26th October, 1967 stands on a different footing. During this period the appellant was validly under suspension and whilst under suspension he received subsistence allowance as provided in the relevant rules. Whether for this period the appellant is entitled to be paid full pay and allowances or some proportion of such pay and allowances or nothing more than the subsistence allowance would be a matter for the appropriate authority to decide under the relevant rules. If the decision of the appropriate authority on this question, when made, is contrary to the rules governing the conditions of service, the appellant would be free to challenge such decision. But that

question does not arise now and we do not propose to express any opinion upon it."

The apex court in ***Mahender Singh V. Union of India and another,*** 1991 Supp (2) SCC 127 has held as under:

"There are three requirements for the application of Rule 10 (4); (i) the government servant is dismissed, removed or compulsorily retired as a measure of penalty; (ii) the penalty of dismissal, removal or compulsory retirement is set aside or declared or rendered void by a decision of a court of law; (iii) the disciplinary authority, decides to hold a further inquiry against the government servant on the allegations on which the original order of penalty was imposed. If these three requirements are satisfied then the government servant shall be deemed to have been placed under suspension by the appointing authority from the date of original order of penalty of dismissal, removal or compulsory retirement and he shall continue to remain under suspension until further orders.

The order of the Tribunal and the management as to the retrospective suspension of the appellant cannot be sustained under Rule 10 (4) of the Rules. It may be relevant to remember that the original order of termination was not passed against the appellant as a measure of punishment. It was a 'simpliciter termination' of the appellants' service under Rule 5 (1) of the CCS (Temporary Service) Rules, 1965. The Tribunal has set aside that order on the ground that it amounts to punishment and the order of punishment could not have been made without holding an inquiry against the appellant. But that is not the same thing to state that the management made an order terminating the services of the appellant by way of penalty. The management treated the said order as a

simpliciter discharge. Rule 10 (4) therefore, has no application to the case of the appellant.

Secondly, it would be a misnomer to call it a further inquiry as contemplated under Rule 10 (4). There was no question of the management deciding to hold a further inquiry since there was no earlier inquiry against the appellant.

The power to place delinquent officer under suspension from the date of the original order of dismissal, removal or compulsory retirement from service would be available provided if the original order of dismissal, removal or compulsory retirement from service was made by way of penalty and that order has been set aside by a court of law. Since there was no inquiry leading to the removal of the appellant in the first instance, the decision to hold fresh inquiry does not attract Rule 10 (4). The retrospective suspension of the appellant is, therefore, unjustified and without authority of law."

The constitutionality of Rule 10 (4) of the CCS (CCA) Rules, 1965 was upheld by the Supreme Court in ***Nelson Motis Vs. union of India and another,*** (1992) 4 SCC 711. Their Lordships of the Apex Court have held as under:

"The language of sub-rule (4) of Rule 10 is absolutely clear and does not permit any artificial rule of interpretation to be applied. It is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences. The language of the sub-rule here is precise and unambiguous and, therefore, has to be understood in the natural and ordinary sense. As was observed in innumerable

cases in India and in England, the expression used in the statute alone declares the intent of the legislature. In the words used by this Court in State of U.P. v. Dr. Vijay Anand Maharaj when the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the act speaks for itself. Reference was also made in the reported judgment of Maxwel stating:

> **"The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words.**

The comparison of the language with that of sub rule (3) reinforces the conclusion that sub rule (4) has to be understood in the natural sense. It will be obs3erved that in sub-rule (3) the reference is to "a Government servant under suspension" while the words "under suspension", are omitted in sub-rule (4). Also the sub rule (3) directs that on the order of punishment being set aside, "the order of his suspension shall be deemed to have continued in force" but in sub-rule (4) it has been said that "the Government servant shall be deemed to have been placed under suspension." The departure made by the author in the language of sub-rule (4) from that of sub rule (3) is conscious and there is no scope for attributing the artificial and strained meaning thereto. In the circumstances it is not permissible to read down the provisions as suggested. We, therefore, hold that as a result of sub-rule (4) a government servant, though not earlier under suspension, shall also be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, *provided of course, that the other conditions mentioned therein are satisfied*.

The apex court in ***Union of India & others Vs. V.B.Hajela***, (1997) 10 SCC 531 has opined as under:

> **"A perusal of the said provisions shows that sub-rule (3) deals with a situation where the penalty of dismissal, removal or compulsory retirement from service is set aside in appeal or on review and provides that if the government servant was under suspension the order of suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement. Sub-rule (4) deals with a situation where the penalty of dismissal, removal or compulsory retirement from service is set aside or declared null and void in consequences of or by a decision of a Court of Law and provides that in such a case if the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement has been imposed the government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement."**

It is not borne out from the record that before the issuance of Annexure P-3, any exercise was undertaken to ensure whether the conditions mentioned in sub-rule (4) of Rule 10 of CCS (CCA) Rules, 1965 were applicable or not after setting aside of the dismissal order by this Court. The petitioner's headquarters as per Annexure P-3 were fixed at Shimla meaning thereby the master-servant relations have come into existence. It is no more *res integra* that the orders passed by the competent authorities having civil consequences must be a reasoned/speaking.

The Hon'ble Supreme Court has held in ***Messrs. Mahabir Prasad Santosh Kumar Vs. State of U.P. & others,*** 1970 (1) SCC 764 as under:

> **"The authorities have disclosed by their conduct a reckless disregard of the rights of the appellants. The order passed by the District Magistrate, canceling the licences was quasi-judicial : it could be made only on a consideration of the charges and the explanation given by the appellants. That necessarily implied that the District Magistrate had to give some reasons why he held the charges proved and the explanation unacceptable. When the matter was carried in appeal, the State Government could at least have acted with some awareness that citizens have rights which must be protected against possible arbitrary action by subordinate officials. The District Magistrate is not made the final authority in canceling the licence. The appellants had a right to carry on their business, and they held a licence to carry on their business they could be deprived of their right by an executive order supported by good and adequate reasons. The relevant rules granted a right of appeal to the State Government against that order and that implied that the aggrieved party must have an opportunity to convince the State Government that the order passed by the District Magistrate was erroneous. That right could be effectively exercised if reasons be recorded by the District Magistrate and supplied to the aggrieved party. If the aggrieved party is not supplied the reasons the right to appeal is an empty formality."**

The Hon'ble Supreme Court in ***State of West Bengal Vs. Atul Krishna Shaw and another***, 1991 Supp (1) SCC 414 has held as under:

"Admittedly the High Court did not go into any of the questions raised by the appellant in the writ petition. It summarily dismissed the writ petition. Therefore, what we have to read is only the orders of the appellate tribunal and the Assistant settlement Officer – the primary authority together with the record of evidence Counsel took is through the evidence to show that the findings recorded by the appellate Judge are based on either no evidence or surmises and conjectures. We have given our anxious consideration to the respective contentions and considered the evidence on record one again. It is indisputably true that it is a quasi judicial proceeding. If the appellate authority had appreciated the evidence on record and recorded the findings of fact, those findings are binding on this Court or the High Court. By process of judicial review we cannot appreciate the evidence and record our own findings of fact. If the findings are based on no evidence or based on conjectures or surmises and no reasonable man would, on given facts and circumstances, come to the conclusion reached by the appellate authority on the basis of the evidence on record, certainly this Court would oversee whether the findings recorded by the appellate authority is based on no evidence or beset with surmises or conjectures. Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice."

The apex court in ***Institute of Chartered Accountants of India Vs. L.K. Ratna and others***, 1986 (4) SCC 537 has opined as under:

"Before we conclude, we may refer to a third point raised before us, the point being whether the Council is obliged to give reasons for its finding that a member is guilty of misconduct. It seems to us that it is bound to do so. In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under Section 22-A of the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a 'finding'. Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding."

The question which further requires consideration by this Court is as to what relief the petitioner is entitled after her dismissal was set aside by this Court. In Swamy's Compilation of CCS (CCA) Rules, 1965, in para 4 of Chapter-5 it is stipulated that when the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law/Administrative Tribunal on the merits of the case, without any reservation, full pay and allowances are to be allowed to the Government servant on reinstatement for the entire period of absence including the period of suspension and the entire period has to be treated as duty for all purposes. The petitioner had been informed vide Annexure P-2 that her period of suspension will not be treated on duty.

The relevant provisions for deciding in what manner the period of suspension has to be regularized after the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law will be governed under FR 54-A. In the present case after the dismissal order of the petitioner has been set aside no further inquiry was contemplated. Even the conditions mentioned in sub rule (4) of Rule 10 were not complied with by the employer while issuing Annexure P-3. In view of this the entire period of absence from duty is to be regularized and the petitioner will be entitled to pay and allowances and she will be treated on duty for all purposes.

The upshot of the above discussion is that since no inquiry was initiated against the petitioner as stipulated under sub rule (4) of Rule 10 of the CCS (CCA) Rules, 1965, issuance of Annexure P-3 was arbitrary. The Apex Court has held in the above stated cases that before invoking sub rule (4) of Rule 10 of the CCS (CCA) Rules, 1965, the conditions mentioned therein must exists. The issuance of Annexures P-1 and P-2 dated 8.2.2002 and 15.2.2002 are also not in accordance with law. The effect of setting aside the dismissal of the petitioner by a Division Bench of this Court was that she was deemed to have been re-instated and entitled to get the benefits accruing under FR 54-A. The entire period with effect from her dismissal i.e. from 4.4.1997 to 27.9.2001 is required to be regularized with all the consequential benefits i.e. full pay and allowances etc.

Accordingly the writ petition is allowed. Annexures P-1, P-2 and P-3 are quashed and set aside. The respondent is directed to regularize the period with effect from 4.4.1997 to 27.9.2001 with all consequential benefits i.e. full pay and allowances within a period of 6 weeks from today. There shall be no order as to costs.

(Rajiv Sharma), Judge

June 14, 2007
Awasthi